

Fact Sheet: Generator Improvements Final Rule

EPA finalized a rule that revises the hazardous waste generator regulations by making them easier to understand and providing greater flexibility in how hazardous waste is managed to better fit today's business operations. The revisions will also protect Americans by enhancing the safety of facilities that create hazardous waste and the response capabilities of emergency responders by improving risk communication. The new rule directly responds to feedback from our regulated community, states, communities, and other stakeholders and represents a significant investment in evaluating and addressing the challenges in the hazardous waste generator program.

Background

The hazardous waste generator regulatory program was originally promulgated in 1980. Over the course of the last 36 years, the Agency, through experience with implementing the program, working with states and other stakeholders, and conducting program evaluations, has become aware of ambiguities, inconsistencies, gaps, and a lack of flexibility in the regulations that it is addressing in this rulemaking to create a program that is more effective in protecting human health and the environment. EPA proposed changes to address these concerns on September 25, 2015, and received more than 200 comments from the state and local governments implementing hazardous waste regulations, the generating industry, the hazardous waste management industry, academia, the energy sector, retailers, and others.

Revisions

This final rule includes over 60 changes to the hazardous waste generator regulations that clarify existing requirements, increase flexibility, and improve environmental protection. These changes also reorganize the regulations to make them easier to follow and make certain technical corrections. The list below provides examples of some of the more significant changes in the final rule for each category.

Provisions to increase flexibility for generators of hazardous wastes

* Allowing very small quantity generators (VSQGs) (previously known in the federal regulations as “conditionally exempt small quantity generators”—CESQGs) to send hazardous waste to a large quantity generator (LQG) that is under the control of the same person and consolidate it there before sending it on to management at a RCRA-designated facility, provided certain conditions are met. In some situations, organizations in industry, government, and academia may have satellite locations that qualify as VSQGs and that could take advantage of this provision to send their materials to an LQG within their company and ultimately to manage the hazardous waste in an environmentally sound manner rather than as an exempt waste.

* Allowing a VSQG or a small quantity generator (SQG) to maintain its existing generator category in the case of an event in which the VSQG or SQG generates a quantity of hazardous waste in a calendar month that would otherwise bump the generator into a more stringent generator regulatory category. Under this provision, generators that satisfy the listed conditions do not have to comply with the more stringent generator standards when an unusual event such as a cleanout or an act of nature causes its generator category to temporarily increase.

Improvements of environmental protection

- * Updating the emergency response and contingency planning provisions for SQGs and LQGs to include Local Emergency Planning Committees (LEPC) among those emergency planning organizations with which a generator may make response arrangements and to require that new and existing LQGs submit quick reference guides with the key information when they either develop or update their contingency plans to local responders for easy access during an event.
- * Requiring periodic re-notification for SQGs every four years (SQGs only notify once under the current system).
- * Revising the regulations for labeling and marking of containers and tanks to clearly indicate the hazards of the hazardous waste contained inside.

Provisions to improve generator compliance

- * Clarifying inconsistent guidance on which generator category applies when a generator generates both acute and non-acute hazardous waste in a calendar month.
- * Revising the regulations for completing the RCRA biennial report to be consistent with the current instructions distributed with the form.
- * Replacing the phrase “conditionally exempt small quantity generator” with the phrase “very small quantity generator” to be consistent with the other two generator categories—LQGs and SQGs.

Reorganization of the hazardous waste generator regulations

- * Moving the VSQG regulations from § 261.5 into 40 CFR part 262, where the regulations for SQGs and LQGs are located.
- * Moving a number of the generator regulations that are currently located in other parts of the hazardous waste standards into part 262 to replace the current lists of cross references.

Technical corrections

- * Correcting inadvertent errors in the regulations, obsolete programs, and unclear citations.

CCR RULE IMPLEMENTATION UPDATE

RCRA Division Directors Meeting

November 2, 2016

Washington, DC

Overview

- Litigation update and related activities
- Update on initial open dump inventory
- List of facilities with a CCR website
- Update on SWMP activities

Litigation Update & Related Activities

- Final briefs have been filed with the Court and we are waiting for oral argument to be scheduled
- EPA settled with the petitioners on 5 of the litigation issues and on June 14 the DC Circuit Court granted our motion for remand of the issues:
 - Early closure provisions for inactive impoundments (remand with vacatur of §257.100 except paragraph (a))
 - Provision limiting vegetation on slopes to 6 in (remand with vacatur of phrase “not to exceed a height of 6 inches above the slope of the dike”)
 - Inclusion of Boron on the list of constituents for assessment monitoring that triggers corrective action requirements (remand without vacatur)
 - Provision requiring the full corrective action process to clean up all non-groundwater releases (remand without vacatur)
 - Provision limiting the extended closure time frames to situations where the facility needs to continue to use the unit to manage CCR only (remand without vacatur)

Litigation Update & Related Activities – Cont'd

- In response to the vacatur of the “early closure” provisions for inactive CCR impoundments, EPA published a final rule on Aug 5 extending compliance deadlines for certain eligible units (CCR “Extension Rule”)
 - An eligible impoundment is one that completed the recordkeeping, notification and internet posting requirements for inactive units by the rule’s deadlines
 - The effect of the vacatur is that an inactive impoundment must now comply with all of the requirements applicable to existing impoundments
 - Aug 5 rule extends compliance deadlines to allow these inactive impoundments adequate time to come into compliance
 - Amendments became effective on Oct 4, 2016
- Next 2 slides summarize the compliance time frames for impoundments (including the new deadlines for eligible inactive impoundments) and landfills (not affected by the vacatur of the early closure provisions)
 - Deadlines with green text have passed and compliance information should be available on the facility’s CCR website
 - Tables also show in red text those requirements whose deadlines just passed on Oct 17
 - Internet posting associated with these requirements must be completed by Nov 16

CCR Compliance Timeframes: Impoundments

Requirement	Description of Requirement	Deadline: Existing Units	Deadline: Eligible Inactive Units
Air Criteria	- Prepare fugitive dust control plan	Oct 19, 2015	Apr 18, 2017
Internet Posting	- Establish a CCR website	Oct 19, 2015	Oct 19, 2015
Inspections	- Initiate weekly inspections/monthly monitoring - Complete initial annual inspection	Oct 19, 2015 Jan 19, 2016	Apr 18, 2017 Jul 19, 2017
Structural Integrity	- Install permanent marker - Compile a history of construction - Complete initial assessments (hazard potential classification, structural stability, & safety factor) - Prepare emergency action plan	Dec 17, 2015 Oct 17, 2016 Oct 17, 2016 Apr 17, 2017	Jun 16, 2017 Apr 17, 2018 Apr 17, 2018 Oct 16, 2018
Design Criteria	- Document whether or not unit is lined	Oct 17, 2016	Apr 17, 2018
Hydrologic and Hydraulic Capacity	- Prepare initial inflow design flood control system plan	Oct 17, 2016	Apr 17, 2018
Closure & PCC	- Prepare written closure and post-closure care plans	Oct 17, 2016	Apr 17, 2018
GW Monitoring and Corrective Action	- Install GW monitoring system; develop GW S&A program; initial detection monitoring; begin evaluating GW data for statistically significant increases over background levels	Oct 17, 2017	Apr 17, 2019
Location Restrictions	- Complete demonstrations for each of the 5 location restrictions	Oct 17, 2018	Apr 16, 2020

CCR Compliance Timeframes: Landfills

Requirement	Description of Requirement	Deadline: Existing Units
Air Criteria	- Prepare fugitive dust control plan	Oct 19, 2015
Internet Posting	- Establish a CCR website	Oct 19, 2015
Inspections	- Initiate weekly inspections - Complete initial annual inspection	Oct 19, 2015 Jan 19, 2016
Run-On and Run-Off Controls	- Prepare initial run-on and run-off control system plan	Oct 17, 2016
Closure & PCC	- Prepare written closure and post-closure care plans	Oct 17, 2016
GW Monitoring and Corrective Action	- Install GW monitoring system; develop GW S&A program; initial detection monitoring; begin evaluating GW data for statistically significant increases over background levels	Oct 17, 2017
Location Restrictions	- Complete demonstrations for each of the 5 location restrictions	Oct 17, 2018

Litigation Update & Related Activities – Cont'd

- CCR “Remand Rule”
 - Settlement Agreement identifies 3 issues that are to be addressed
 - Propose new requirements relating to the use of vegetation as slope protection on impoundment dikes
 - Propose to clarify the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action process established in the CCR rule
 - Propose to add Boron to the list of assessment monitoring contaminants that trigger corrective action
 - Settlement Agreement calls for rule to be completed by June 2019
 - ORCR is planning to release a proposed rule for public comment by the end of 2017

Update on Initial Open Dump Inventory

- Publishing a list of “open dumps” is a statutory requirement (RCRA 4004(b))
 - An open dump is a unit which has not complied with the CCR rule requirements
 - For more information see preamble discussion in April 17, 2015 final rule (80 Fed. Reg. 21431)
- ORCR published a draft inventory on EPA’s website on Aug 26
 - Only criteria assessed: (1) creation of a CCR website, and (2) availability of the fugitive dust control plan on its website
 - Draft open dump inventory included 7 facilities
 - Region 2 – Puerto Rico (1)
 - Region 4 – Georgia (1), North Carolina (1)
 - Region 5 – Michigan (1), Minnesota (1), Ohio (2)
- ORCR received 15 comments
- Based on initial discussions, ORCR expects to remove 6 of 7 facilities from the inventory because of actions taken by the facility to come into compliance with the rule
- ORCR continues to discuss the status of the “inactive” CCR landfill in MN that received CCR after the rule’s effective date
- ORCR hopes to publish the final initial open dump inventory soon

Draft List of Facilities with a CCR Website (Website is a Requirement in the CCR Rule)

- List published on EPA's website simultaneously with the draft open dump inventory
- List identifies name of plant, location and URL of CCR website
- Draft list of facilities include:
 - Number of states with one or more facilities with a CCR website: 43
 - Total number of CCR websites identified: 293
 - States with 10 or more CCR websites:

• Illinois – 17	Michigan – 14
• Texas – 17	North Carolina – 12
• Indiana – 16	Iowa – 11
• Kentucky – 16	Ohio – 10
• Missouri – 16	Pennsylvania – 10
 - Note: Above counts do not include information obtained since release of draft list
- Draft list can be accessed at: <https://www.epa.gov/coalash>
- Anticipate updating list when we release the final open dump inventory

Solid Waste Management Plan (SWMP) Update

- States with approved SWMPs for CCRs
 - Kansas – approved Oct 2015 and planning on adopting CCR regulations
 - Virginia – partial approval granted Oct 2016
- States that have adopted CCR regulations similar to federal rules
 - Virginia – incorporated federal CCR rule by reference (9VAC20-81-800)
 - Utah – finalized rules similar to federal CCR rule (Rule R315-319)
- States that have submitted a draft SWMP for CCRs for EPA review
 - Indiana – draft plan submitted on Sept 30, 2016

Many Thanks to the SWMP Implementation Workgroup!

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